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11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16 J.L., C.B., K.S., P.M., N.G., R.F., J.D., and G.R. )  
individually, and on behalf of all others similarly )  
17 situated, )

18 Plaintiffs, )

19 v. )

20 GOOGLE LLC, )

21 Defendant. )  
22 )  
23 )  
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27 )  
28 )

CASE NO.: 3:23-cv-03440-AMO

**DEFENDANT GOOGLE LLC'S  
REQUEST FOR JUDICIAL NOTICE  
AND CONSIDERATION OF  
MATERIALS INCORPORATED BY  
REFERENCE, IN SUPPORT OF  
MOTION TO DISMISS  
COMPLAINT**

Judge: Hon. Araceli Martínez-Olguín

1 In considering Defendant Google LLC's ("Google") motion to dismiss, Google hereby  
 2 requests that the Court take judicial notice of, and/or order incorporated by reference, the  
 3 documents listed below:

- 4 1. Google Privacy Policy, July 1, 2023. This document can be found at  
 5 <https://policies.google.com/privacy/archive/20230701?hl=en-US>. A copy, with  
 6 portions referenced in the motion highlighted, is attached as **Exhibit 1**.
- 7 2. Google Privacy Policy, December 15, 2022. This document can be found at  
 8 <https://policies.google.com/privacy/archive/20221215?hl=en-US>. A copy, with  
 9 portions referenced in the motion highlighted, is attached as **Exhibit 2**.
- 10 3. Older versions of Google's Privacy Policy from May 25, 2018 to October 4, 2022.  
 11 These documents can be found at  
 12 <https://policies.google.com/privacy/archive?hl=en-US>. For example, the May 25,  
 13 2018 Privacy Policy can be accessed through a link at that page, and can be found  
 14 directly at <https://policies.google.com/privacy/archive/20180525?hl=en-US>.
- 15 4. Google Terms of Service. This document can be found at  
 16 <https://policies.google.com/terms?hl=en-US>. A copy is attached as **Exhibit 3**.

17 As set forth below, all these documents are subject to judicial notice under Fed. R. Evid.  
 18 201, should be deemed incorporated by reference in Plaintiffs' Complaint, and are properly  
 19 considered on Google's motion to dismiss.

## 20 **DISCUSSION**

21 "In general, websites and their contents may be judicially noticed." *See Threshold Enters.*  
 22 *Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020) (collecting cases).  
 23 Courts within this District routinely take judicial notice of terms of services and policies,  
 24 *Taiming Zhang v. Twitter Inc.*, 2023 WL 5493823, at \*3 (N.D. Cal. Aug. 23, 2023) (collecting  
 25 cases), including Google's Terms of Service and Privacy Policy, *see, e.g., In re Google Assistant*  
 26 *Privacy Litig.*, 457 F. Supp. 3d 797, 813 (N.D. Cal. 2020); *Matera v. Google Inc.*, 2016 WL  
 27 5339806, at \*7 (N.D. Cal. Sept. 23, 2016); *McCoy v. Alphabet, Inc.*, 2021 WL 405816, at \*2  
 28

(N.D. Cal. Feb. 2, 2021). Here, Google respectfully requests that this Court take judicial notice of just such documents: Google’s Privacy Policy and Terms of Service.

Separately, under the incorporation-by-reference doctrine, “a court may consider a writing referenced in a complaint but not explicitly incorporated therein if the complaint relies on the document and its authenticity is unquestioned.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The doctrine extends to situations where a plaintiff’s claim “depends on the contents of a document,” even when “the plaintiff does not explicitly allege the contents of that document in the complaint.” *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Here, the Complaint references and quotes from the July 1, 2023 version of Google’s Privacy Policy. *See, e.g.*, Compl. ¶¶ 93 n.73, 233 & n.185 (citing <https://policies.google.com/privacy>); *see also id.* ¶¶ 5, 98, 142-43. The Complaint also presents a redline comparison between the July 1, 2023 and December 15, 2022 versions of Google’s Privacy Policy, and alleges that Google introduced a significant change in July 2023. Compl. ¶¶ 98, 105, 142. Thus, the historical versions of Google’s Privacy Policy should also be incorporated by reference. Additionally, the Complaint relies on Google’s Terms of Service. *See* Compl. ¶ 211 & n.184 (citing <https://policies.google.com/terms>). For these reasons, the Privacy Policies and Terms of Service are properly considered incorporated in Plaintiffs’ Complaint. *See, e.g., McCoy*, 2021 WL 405816, at \*2.

For these reasons, Google respectfully requests that the Court consider the above-referenced documents in connection with Google’s Motion to Dismiss Plaintiffs’ Complaint.

Dated: October 16, 2023

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By: /s/ David H. Kramer

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